

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0198-MWD-E **TCEQ ID:** RN101919421 **CASE NO.:** 32608
RESPONDENT NAME: City of Whitney

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Approximately one mile west of the intersection of Farm-to-Market Road 1244 and Farm-to-Market Road 933, Hill County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 1, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1203; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896 Respondent: The Honorable Gwen Evans, Mayor, City of Whitney, Post Office Box 2050, Whitney, Texas 76692 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 27, 2006</p> <p>Date of NOE Relating to this Case: January 31, 2007 (NOE)</p> <p>Background Facts: This was a routine record review. One violation was documented.</p> <p>WATER</p> <p>Failed to comply with permit effluent limits [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit ("TPDES") No. WQ0011408002, Effluent Limitations and Monitoring Requirements Nos. 1 and 3].</p>	<p>Total Assessed: \$9,960</p> <p>Total Deferred: \$1,992 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$7,968</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>Within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0011408002.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 9, 2007

TCEQ

DATES

Assigned

5-Feb-2007

PCW

14-Feb-2007

Screening

8-Feb-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent City of Whitney

Reg. Ent. Ref. No. RN101919421

Facility/Site Region 9-Waco

Major/Minor Source Minor

CASE INFORMATION

Enf./Case ID No. 32608

Docket No. 2007-0198-MWD-E

Media Program(s) Water Quality

Multi-Media

Admin. Penalty \$ Limit Minimum \$0

Maximum

\$10,000

No. of Violations 1

Order Type 1660

Enf. Coordinator Heather Brister

EC's Team EnforcementTeam 1

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

180% Enhancement

Subtotals 2, 3, & 7 \$7,200

Notes

The Respondent self-reported 34 months of effluent violations and received two notices of violation (NOVs) for violations that are considered to be same or similar to those cited in this action.

Culpability

No

0% Enhancement

Subtotal 4 \$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts \$200

Approx. Cost of Compliance \$2,000

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6 \$0

SUM OF SUBTOTALS 1-7

Final Subtotal \$11,200

OTHER FACTORS AS JUSTICE MAY REQUIRE

-11%

Adjustment -\$1,240

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Recommend reduction in the penalty so that monthly self-reported effluent violations do not overly-impact the penalty amount and to prevent double-enhancement of the penalty amount for same violations that were not self-reported.

Final Penalty Amount \$9,960

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$9,960

DEFERRAL

20%

Reduction

Adjustment -\$1,992

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

\$7,968

Screening Date 8-Feb-2007

Docket No. 2007-0198-MWD-E

PCW

Respondent City of Whitney

Policy Revision 2 (September 2002)

Case ID No. 32608

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101919421

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	36	180%
	Other written NOVs		0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 180%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent self-reported 34 months of effluent violations and received two notices of violation (NOVs) for violations that are considered to be same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 180%

Screening Date 8-Feb-2007

Docket No. 2007-0198-MWD-E

PCW

Respondent City of Whitney

Policy Revision 2 (September 2002)

Case ID No. 32608

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101919421

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0011408002, Effluent Limitations and Monitoring Requirements Nos. 1 and 3.

Violation Description

Failed to comply with permit effluent limits as documented by a TCEQ record review of self-reported data conducted on September 27, 2006, and as shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate five-day carbonaceous biochemical oxygen demand (CBOD5), and flow to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids and pH were also considered. As a result of these discharges, human health or the environment have been exposed to insignificant amounts of pollutants which do not exceed levels harmful to human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 4

304 Number of violation days

mark only one
with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$4,000

Four quarterly events recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$200

Violation Final Penalty Total \$9,960

This violation Final Assessed Penalty (adjusted for limits) \$9,960

Economic Benefit Worksheet

Respondent: City of Whitney
Case ID No.: 32608
Reg. Ent. Reference No.: RN101919421
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$2,000	31-Oct-2005	31-Oct-2007	2.0	\$200	n/a	\$200

Notes for DELAYED costs

Estimated cost for implementing necessary rehabilitation work for the facility. Date Required is the initial month of noncompliance. Final Date is the anticipated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$200

Effluent Limit Violation Table		table rev.
Respondent	City of Whitney	
ID Number(s)	WQ0011408002	
Docket Number	2007-0198-MWD-E	
Enf. Coordinator	Heather Brister	
Corresponds to Violation Number:		1

EFFLUENT PARAMETER			
Permit Limit			
	pH Maximum 9.0	Total Suspended Solids 15 Milligrams per Liter	Five Day Carbonaceous Biochemical Oxygen Demand 10 Milligrams per Liter
Month/Year			
Oct-05	9.1	c	c
Dec-05	c	44	16
Jan-06	c	28	15
Feb-06	c	26	13
Mar-06	9.5	26	14
Apr-06	9.7	28	21
May-06	9.7	26	c
Jun-06	9.6	18	c
Jul-06	9.5	c	c
Sep-06	9.6	c	14

**C = compliant

Compliance History

Customer/Respondent/Owner-Operator:	CN601048119	City of Whitney	Classification: AVERAGE	Rating: 2.89
Regulated Entity:	RN101919421	POLK STREET PLANT	Classification: AVERAGE	Site Rating: 2.77
ID Number(s):	WASTEWATER	PERMIT	WQ0011408002	
	WASTEWATER	PERMIT	TPDES0106551	
	WASTEWATER	PERMIT	TX0106551	
	WASTEWATER LICENSING	LICENSE	WQ0011408002	

Rating Date: September 01 06 Repeat Violator: NO

Location: Approximately 1 mile west of the intersection of Farm-to-Market Road
1244 and Farm-to-Market Road 933 in Hill County, Texas

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: February 07, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 07, 2002 to February 07, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Heather Brister Phone: 512-239-1203

Site Compliance History Components

- | | |
|----------------------------------------------------------------------------------------------|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- | | |
|----------------------------------------------------------------------------------------------------------------------|-----|
| A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. | N/A |
| B. Any criminal convictions of the state of Texas and the federal government. | N/A |
| C. Chronic excessive emissions events. | N/A |
| D. The approval dates of investigations. (CCEDS Inv. Track. No.) | |

- | | | |
|----|------------|----------|
| 1 | 01/17/2003 | (224993) |
| 2 | 12/16/2002 | (224989) |
| 3 | 06/27/2003 | (31897) |
| 4 | 08/28/2003 | (150488) |
| 5 | 10/14/2002 | (224986) |
| 6 | 02/11/2004 | (323405) |
| 7 | 03/08/2004 | (323406) |
| 8 | 04/20/2004 | (323407) |
| 9 | 05/25/2004 | (323408) |
| 10 | 05/18/2004 | (364620) |
| 11 | 06/20/2003 | (323409) |
| 12 | 09/09/2002 | (224981) |
| 13 | 07/28/2003 | (323410) |
| 14 | 06/09/2004 | (364621) |
| 15 | 09/10/2003 | (323411) |
| 16 | 10/13/2003 | (323412) |
| 17 | 07/12/2004 | (364622) |
| 18 | 11/10/2003 | (323413) |
| 19 | 08/16/2004 | (364623) |
| 20 | 08/15/2002 | (224978) |
| 21 | 12/22/2003 | (323414) |
| 22 | 01/20/2004 | (323415) |
| 23 | 09/13/2004 | (364624) |
| 24 | 10/13/2004 | (364625) |
| 25 | 07/18/2002 | (224975) |
| 26 | 04/14/2005 | (426465) |
| 27 | 04/20/2006 | (505319) |

28	05/19/2005	(426466)
29	06/19/2006	(505320)
30	06/14/2005	(426467)
31	06/13/2002	(224972)
32	05/23/2006	(505321)
33	05/12/2005	(426468)
34	05/13/2002	(224969)
35	01/31/2007	(514312)
36	02/14/2005	(446748)
37	03/02/2005	(446749)
38	04/22/2003	(224966)
39	07/13/2005	(446750)
40	04/10/2002	(224965)
41	09/12/2005	(446751)
42	02/09/2006	(479665)
43	03/14/2003	(224961)
44	03/10/2006	(479666)
45	03/15/2002	(224960)
46	10/03/2005	(479667)
47	02/21/2003	(224958)
48	02/14/2002	(224957)
49	11/16/2005	(479668)
50	12/19/2005	(479669)
51	01/12/2006	(479670)
52	02/21/2002	(283031)
53	04/14/2006	(456264)
54	07/24/2006	(483336)
55	05/10/2006	(527595)
56	11/12/2004	(388853)
57	11/12/2004	(388854)
58	07/14/2006	(527596)
59	12/08/2004	(388855)
60	09/20/2006	(527597)
61	01/12/2004	(388856)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: **10/31/2002** (224986)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: **01/31/2004** (323405)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: **02/29/2004** (323406)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: **03/31/2004** (323407)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date:	04/30/2004	(364620)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	05/31/2004	(364621)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	09/30/2003	(323412)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	04/07/2006	(456264)	Classification:	Moderate
Self Report?	NO			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(9)			
Rqmt Prov:	PERMIT OR; No. 3(b), Pg. 9			
Description:	Failure by the permittee to submit a closure plan for review and approval to the Land Application Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 319, SubChapter A 319.11(d)			
Rqmt Prov:	PERMIT M&RR; No. 2, Pg. 4			
Description:	Failure to comply with procedures specified in 30 TAC 319.11.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT EL&MR, Pg. 2			
Description:	Failure by the permittee to maintain compliance with permitted effluent limitations.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a)[G]			
Rqmt Prov:	PERMIT M&RR; No. 3(c); Pg. 5			
Description:	Failure to maintain records of monitoring activities.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Rqmt Prov:	PERMIT M&RR; No. 7(c), Pg. 6			
Description:	Failure to report to the Waco Regional Office in writing all effluent violations that deviate from the permitted effluent limitations by more than 40% within 5 working days.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.11(c)			
Rqmt Prov:	PERMIT M&RR; No. 2, Pg. 5			
Description:	Failure by the permittee to comply with test procedures specified in 319.11.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.11(e)			
Rqmt Prov:	PERMIT M&RR; No. 2, Pg. 5			
Description:	Failure to comply with procedures specified in 30 TAC Chapter 319.11.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)			
Rqmt Prov:	PERMIT Operational Requirements No. 1, Pg. 9			
Description:	Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.			

Date: 07/31/2002 (224978)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2004 (364622)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2003 (323413)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2004 (364623)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2006 (426468)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2004 (364625)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2005 (426465)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2006 (505319)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2005 (426466)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2006 (505320)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2005 (426467)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2002 (224969)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date:	03/31/2003	(224966)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	08/31/2005	(446751)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	06/30/2003	(31897)		
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.6 30 TAC Chapter 319, SubChapter A 319.7(a)[G] 30 TAC Chapter 319, SubChapter A 319.7(c)			
Description:	Failure to calibrate the chlorine residual analyzer prior to sample analysis.			
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a)[G] 30 TAC Chapter 319, SubChapter A 319.7(c)			
Description:	Failure to maintain calibration records for the chlorine analyzer			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to maintain the required Effluent Limitation for Dissolved Oxygen minimum of 4.0 mg/l for the months of April and July of 2002.			
Date:	02/28/2003	(224961)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	01/31/2006	(479665)		
Self Report?	YES		Classification:	Moderate
	TWC Chapter 26 26.121(a)[G]			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	01/31/2003	(224958)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2006	(479666)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	09/30/2005	(479667)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	10/31/2005	(479668)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]			
Description:	Failure to meet the limit for one or more permit parameter			

Date: 12/31/2005 (479670)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 04/30/2006 (527595)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2006 (527596)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2004 (388855)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2004 (388856)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2002 (224993)

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

Date: 09/30/2006

Self Report? YES

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF WHITNEY
RN101919421

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2007-0198-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Whitney ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment facility located approximately one mile west of the intersection of Farm-to-Market Road 1244 and Farm-to-Market Road 933, Hill County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about February 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Nine Thousand Nine Hundred Sixty Dollars (\$9,960) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Seven Thousand Nine Hundred Sixty-Eight Dollars (\$7,968) of the administrative penalty and One Thousand Nine Hundred Ninety-Two Dollars (\$1,992) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with permit effluent limits in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit ("TPDES") No. WQ0011408002, Effluent Limitations and Monitoring Requirements Nos. 1 and 3, as documented by a TCEQ record review of self-reported data conducted on September 27, 2006, and as shown in the attached table:

<i>EFFLUENT PARAMETER</i>			
<i>Permit Limit</i>			
	pH Maximum 9.0	Total Suspended Solids 15 Milligrams per Liter	Five Day Carbonaceous Biochemical Oxygen Demand 10 Milligrams per Liter
<i>Month/Year</i>			
Oct-05	9.1	c	c
Dec-05	c	44	16
Jan-06	c	28	15
Feb-06	c	26	13
Mar-06	9.5	26	14
Apr-06	9.7	28	21
May-06	9.7	26	c
Jun-06	9.6	18	c
Jul-06	9.5	c	c
Sep-06	9.6	c	14

**C = compliant

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Whitney, Docket No. 2007-0198-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the City shall, within 60 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0011408002. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

8/21/2007
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

04-26-07
Date

Gwen Evans

Name (Printed or typed)
Authorized Representative of
City of Whitney

Mayor

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

